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PART-I

Notifications, Orders and Declarations by Haryana Government

STATE ELECTION COMMISSION HARYANA
NIRVACHAN SADAN, PLOT NO. 2, SECTOR 17,
PANCHKULA

Order

The 14th November, 2018

No. SEC/3ME/2018/5529.— The General Elections of Municipal Corporation, Karnal was held on 02.06.2013 and the result of the elected candidates was declared 04.06.2013.

2. Section 8B of the Haryana Municipal Corporation Act, 1994, every candidate at an election shall, either himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent from the date of filing of nomination papers to the date of declaration of the result thereof, both dates inclusive. The account shall contain such particulars, as may be notified by the State Election Commission in this behalf. The total of the said expenditure shall not exceed such amount as may be notified by the State Election Commission from time to time.

3. State Election Commission issued Notification No. SEC/4ME/2007/7027, dated 09.05.2007 in exercise of powers conferred inter alia under Section 8D of the Act and made the Haryana Municipal Corporation Election Expenditure (Maintenance and Submission of Accounts) Order, 2007. Clause 5(6) of the Order provide that every contesting candidate or his election agent shall lodge account of election expenditure within thirty days from the date of declaration of election result with the Deputy Commissioner or an officer authorized by the State Election Commission.

4. Section 8D of the Haryana Municipal Corporation Act, 1994 read with Section 10 A of the Representation of People Act, 1951 further provides that if the Election Commission is satisfied that a person –

- (a) has failed to lodge an account of election expenses, within the time and in the manner required by or under this Act, and
- (b) has no good reason or justification for the failure

the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.

5. In pursuance of the above provisions, the State Election Commission, Haryana *vide* its notification No. SEC/4ME/2013/2320, dated 02.05.2013 in exercise of powers vested under clause (i) Article 243 ZA of the Constitution of India, sub-section 3 of Section 8B of the Haryana Municipal Corporation Act, 1994 had prescribed the limit of expenditure of Rs.1,75,000/- that may be incurred by the contesting candidate or his authorized agent in connection with election of Municipal Corporation, Karnal and account of election expenses shall be filed/lodged with the Deputy Commissioner or any other officer prescribed by the Commission within 30 days from the date of declaration of the result of election.

6. The State Election Commissioner, Haryana in exercise of powers contained under Section 9 (1A) of the Haryana Municipal Corporation Act, 1994 authorized District Attorney, State Election Commission, Haryana *vide* order No. SEC/1ME/2017/2017, dated 01.12.2017 to decide the cases of disqualification of the candidates, who failed to lodge their account of election expenses. Thereafter in modification of above orders with order No. SEC/1ME/2018/842, dated 28.02.2018, the district assigned to District Attorney were assigned between undersigned and Assistant State Election Commissioner, Haryana. District Karnal was assigned to undersigned for this purpose.

7. As reported by the Deputy Commissioner, Karnal, Sh. Manoj Kumar, contesting candidate, Ward No.9 had contested the election of Municipal Corporation, Karnal held on 02.06.2013 but failed to submit his election expenditure account within the prescribed time.

8. In pursuance of the amendment and subsequent insertion of Section 34-D the State Election Commissioner can review his orders made under Section 34-C of the Act if a person so disqualified under Section 34-B or 34-C files an appeal for review of order within a period of 45 days from the receipt of the orders. Section 13K reads as under:-

“Review.- A member so disqualified under section 34-B or 34-C may file an application for review of order before the State Election Commission within a period of forty-five days from the receipt of the order. The order passed by the State Election Commission under this section shall be final and no civil court shall have jurisdiction to entertain a petition against such order.”

9. Hence, in his review application the applicant Sh. Manoj Wadhwa S/o Sh. Radhe Sham r/o H. No. 676 Sector 13, Urban Estate, Karnal submitted that he had contested the municipal elections held on 02.06.2013. In compliance of Section 8(D) he had filed his expenditure statement incurred during elections and submitted it duly countersigned from the Competent Authority to the Deputy Commissioner within prescribed limit of 30 days. But now he was orally informed by some persons that the State Election Commission has disqualified him for non-submission of election expenses. He further stated that since he got the election expenses deposited through his brother Bharat Wadhwa who also passed away on 06.09.2017, he searched the almirah of his brother and found the relevant record of deposition of election expenses in his brother's almirah. He further said that since the notice of State Election Commission was not personally delivered upon him he cannot be technically disqualified. Secondly since he has already deposited the election expenditure within the stipulated time he cannot be disqualified on this ground. Finally he requested to review the disqualification order and set-aside the disqualification order passed by the competent authority on 12.03.2018.

10. In view of the review application of Sh. Wadhwa a notice was issued to Sh. Wadhwa as well as to the Deputy Commissioner, Karnal asking him to depute a dealing person alongwith record for hearing on 05.10.2018 in this case. On the said date Sh. Wadhwa submitted a copy of the expenditure statement so submitted duly countersigned by the Expenditure Observer. After receipt of the Expenditure Statement Municipal Corporation Karnal was asked to re-verify the facts of the case in the light of statement made by Sh. Wadhwa and case was fixed for hearing on 22.10.2018. On 22.10.2018 the applicant and the representative of Municipal Corporation Karnal appeared before the undersigned. The representative submitted a letter duly signed by the Commissioner, Municipal Corporation Karnal in which it was stated that 2 persons in the name of Manoj Kumar contested election of MC Karnal from Ward No. 9 held on 02.06.2013. One person is Manoj Kumar S/o Sh. Radhey Sham and other is Manoj Kumar S/o Sh. Sham Sundar. Letter further states that the then Expenditure Observer *vide* his letter dated 24.10.2013 sent a list of 111 persons who have submitted their expenditure statement and were found correct and another 128 candidates did not submit their expenditure statement. In list of 111 persons who have deposited their expenditure statement, name of one Manoj Kumar whose father name is not mentioned figures at Sr. No.4 in Ward No. 9. Name of another candidate Manoj Kumar whose father's name has also not been mentioned and who has also contested election from Ward No. 9 figures at Sr. No. 56 of the list of the candidates who had not deposited the expenditure statements sent by the DC to the Commission *vide* No. 1889 dated 25.10.2013. When the old record was verified it was found that out of 2 Manoj Kumars one has deposited and other has not deposited his expenditure statement. As per the record Sh. Manoj Kumar S/o Sh. Radhe Sham has deposited the expenditure statement and the other Manoj Kumar S/o Sh. Shyam Sundar has not deposited. Hence, due to non-mentioning of father's name of both Manoj Kumars the notice for hearing was erroneously served upon Manoj Kumar S/o Sh. Radhey Sham who has already deposited his expenditure statement. Even the official of Municipal Corporation, Karnal who sent notices for hearing did not care to verify the same. In fact this notice should have been served upon Sh. Manoj Kumar S/o Sh. Shyam Sundar.

11. I have heard Sh. Manoj Kumar S/o Sh. Radhey Sham, representative of MC Karnal and the official of DETC (ST), Karnal. I have also examined the order of District Attorney, State Election Commission Haryana (Competent Authority), the review application of the applicant and relevant record. In view of amendment mentioned above State Election Commission has been empowered to review its orders. After going through the above facts I am convinced that the notice for personal hearing and resultant disqualification order dated 12.03.2018 has been wrongly served upon Sh. Manoj Kumar S/o Sh. Radhey Sham due to negligence of official/officials of Municipal Corporation, Karnal whereas Sh. Manoj Kumar S/o Sh. Radhey Sham has already deposited his expenditure statement as reported by the Commissioner, Municipal Corporation, Karnal. Hence, the review application of Sh. Manoj Kumar S/o Sh. Radhey Sham is accepted and disqualification order dated 12.03.2018 of Sh. Manoj Kumar S/o Sh. Radhey Sham is hereby withdrawn.

Panchkula:
The 22nd October, 2018.

DR. P. K. SHARMA,
Secretary,
State Election Commission, Haryana.